

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           943.0586, F.S.; providing applicability for the  
 4           administrative sealing of specified criminal history  
 5           records; amending s. 943.059, F.S.; expanding an  
 6           existing public records exemption to include the  
 7           administrative sealing of specified criminal history  
 8           records; conforming provisions to changes made by the  
 9           act; providing for future review and repeal of the  
 10          expanded exemption; providing for reversion of  
 11          specified language if the exemption is not saved from  
 12          repeal; providing a statement of public necessity;  
 13          providing a contingent effective date.

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 15   Be It Enacted by the Legislature of the State of Florida:

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 17           Section 1. Subsection (2) is added to section 943.0586,  
 18   Florida Statutes, as created by HB 857, 2017 Regular session, to  
 19   read:

20           943.0586 Administrative sealing of criminal history  
 21   records.—

22           (2) The sealing under this section of a criminal history  
 23   record has the same effect as a sealing under s. 943.059(4).

24           Section 2. Subsection (4) of section 943.059, Florida  
 25   Statues, is amended to read:

26           943.059 Court-ordered sealing of criminal history  
27 records.—The courts of this state shall continue to have  
28 jurisdiction over their own procedures, including the  
29 maintenance, sealing, and correction of judicial records  
30 containing criminal history information to the extent such  
31 procedures are not inconsistent with the conditions,  
32 responsibilities, and duties established by this section. Any  
33 court of competent jurisdiction may order a criminal justice  
34 agency to seal the criminal history record of a minor or an  
35 adult who complies with the requirements of this section. The  
36 court shall not order a criminal justice agency to seal a  
37 criminal history record until the person seeking to seal a  
38 criminal history record has applied for and received a  
39 certificate of eligibility for sealing pursuant to subsection  
40 (2). A criminal history record that relates to a violation of s.  
41 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,  
42 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,  
43 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
44 s. 916.1075, a violation enumerated in s. 907.041, or any  
45 violation specified as a predicate offense for registration as a  
46 sexual predator pursuant to s. 775.21, without regard to whether  
47 that offense alone is sufficient to require such registration,  
48 or for registration as a sexual offender pursuant to s.  
49 943.0435, may not be sealed, without regard to whether  
50 adjudication was withheld, if the defendant was found guilty of

51 | or pled guilty or nolo contendere to the offense, or if the  
52 | defendant, as a minor, was found to have committed or pled  
53 | guilty or nolo contendere to committing the offense as a  
54 | delinquent act. The court may only order sealing of a criminal  
55 | history record pertaining to one arrest or one incident of  
56 | alleged criminal activity, except as provided in this section.  
57 | The court may, at its sole discretion, order the sealing of a  
58 | criminal history record pertaining to more than one arrest if  
59 | the additional arrests directly relate to the original arrest.  
60 | If the court intends to order the sealing of records pertaining  
61 | to such additional arrests, such intent must be specified in the  
62 | order. A criminal justice agency may not seal any record  
63 | pertaining to such additional arrests if the order to seal does  
64 | not articulate the intention of the court to seal records  
65 | pertaining to more than one arrest. This section does not  
66 | prevent the court from ordering the sealing of only a portion of  
67 | a criminal history record pertaining to one arrest or one  
68 | incident of alleged criminal activity. Notwithstanding any law  
69 | to the contrary, a criminal justice agency may comply with laws,  
70 | court orders, and official requests of other jurisdictions  
71 | relating to sealing, correction, or confidential handling of  
72 | criminal history records or information derived therefrom. This  
73 | section does not confer any right to the sealing of any criminal  
74 | history record, and any request for sealing a criminal history  
75 | record may be denied at the sole discretion of the court.

76 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
 77 history record of a minor or an adult which is ordered sealed by  
 78 a court pursuant to this section or sealed administratively  
 79 pursuant to s. 943.0586 is confidential and exempt from the  
 80 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 81 Constitution and is available only to the person who is the  
 82 subject of the record, to the subject's attorney, to criminal  
 83 justice agencies for their respective criminal justice purposes,  
 84 which include conducting a criminal history background check for  
 85 approval of firearms purchases or transfers as authorized by  
 86 state or federal law, to judges in the state courts system for  
 87 the purpose of assisting them in their case-related  
 88 decisionmaking responsibilities, as set forth in s. 943.053(5),  
 89 or to those entities set forth in subparagraphs (a)1., 4., 5.,  
 90 6., 8., 9., and 10. for their respective licensing, access  
 91 authorization, and employment purposes.

92 (a) The subject of a criminal history record sealed under  
 93 this section, s. 943.0586, or under other provisions of law,  
 94 including former s. 893.14, former s. 901.33, and former s.  
 95 943.058, may lawfully deny or fail to acknowledge the arrests  
 96 covered by the sealed record, except when the subject of the  
 97 record:

- 98 1. Is a candidate for employment with a criminal justice
- 99 agency;
- 100 2. Is a defendant in a criminal prosecution;

101           3. Concurrently or subsequently petitions for relief under  
102 this section, s. 943.0583, or s. 943.0585;

103           4. Is a candidate for admission to The Florida Bar;

104           5. Is seeking to be employed or licensed by or to contract  
105 with the Department of Children and Families, the Division of  
106 Vocational Rehabilitation within the Department of Education,  
107 the Agency for Health Care Administration, the Agency for  
108 Persons with Disabilities, the Department of Health, the  
109 Department of Elderly Affairs, or the Department of Juvenile  
110 Justice or to be employed or used by such contractor or licensee  
111 in a sensitive position having direct contact with children, the  
112 disabled, or the elderly;

113           6. Is seeking to be employed or licensed by the Department  
114 of Education, a district school board, a university laboratory  
115 school, a charter school, a private or parochial school, or a  
116 local governmental entity that licenses child care facilities;

117           7. Is attempting to purchase a firearm from a licensed  
118 importer, licensed manufacturer, or licensed dealer and is  
119 subject to a criminal history check under state or federal law;

120           8. Is seeking to be licensed by the Division of Insurance  
121 Agent and Agency Services within the Department of Financial  
122 Services;

123           9. Is seeking to be appointed as a guardian pursuant to s.  
124 744.3125; or

125           10. Is seeking to be licensed by the Bureau of License

126 Issuance of the Division of Licensing within the Department of  
127 Agriculture and Consumer Services to carry a concealed weapon or  
128 concealed firearm. This subparagraph applies only in the  
129 determination of an applicant's eligibility under s. 790.06.

130 (b) Subject to the exceptions in paragraph (a), a person  
131 who has been granted a sealing under this section, s. 943.0586,  
132 former s. 893.14, former s. 901.33, or former s. 943.058 may not  
133 be held under any provision of law of this state to commit  
134 perjury or to be otherwise liable for giving a false statement  
135 by reason of such person's failure to recite or acknowledge a  
136 sealed criminal history record.

137 (c) Information relating to the existence of a sealed  
138 criminal record provided in accordance with the provisions of  
139 paragraph (a) is confidential and exempt from the provisions of  
140 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
141 except that the department shall disclose the sealed criminal  
142 history record to the entities set forth in subparagraphs (a)1.,  
143 4., 5., 6., 8., 9., and 10. for their respective licensing,  
144 access authorization, and employment purposes. An employee of an  
145 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
146 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,  
147 subparagraph (a)9., or subparagraph (a)10. may not disclose  
148 information relating to the existence of a sealed criminal  
149 history record of a person seeking employment, access  
150 authorization, or licensure with such entity or contractor,

151 | except to the person to whom the criminal history record relates  
152 | or to persons having direct responsibility for employment,  
153 | access authorization, or licensure decisions. A person who  
154 | violates the provisions of this paragraph commits a misdemeanor  
155 | of the first degree, punishable as provided in s. 775.082 or s.  
156 | 775.083.

157 | (d) The expansion of the public records exemption under  
158 | this subsection to include records sealed administratively under  
159 | s. 943.0586 is subject to the Open Government Sunset Review Act  
160 | in accordance with s. 119.15 and shall stand repealed on October  
161 | 2, 2023, unless reviewed and saved from repeal through  
162 | reenactment by the Legislature. If the expansion of the  
163 | exemption is not saved from repeal, this subsection shall revert  
164 | to that in existence on June 30, 2017, except that any  
165 | amendments to such text other than by this act shall be  
166 | preserved and continue to operate to the extent that such  
167 | amendments are not dependent upon the portions of text which  
168 | expire pursuant to this paragraph.

169 | Section 3. The Legislature finds that it is a public  
170 | necessity that the criminal history records of a minor or an  
171 | adult, which have been administratively sealed pursuant to s.  
172 | 943.0586, Florida Statutes, because the case was not filed, was  
173 | dismissed or nolle prosequi, or resulted in the granting of a  
174 | judgment of acquittal or verdict of not guilty, be made  
175 | confidential and exempt from s. 119.07(1), Florida Statutes, and

176 s. 24(a), Article I of the State Constitution. The presence of a  
177 criminal history record in an individual's past which has not  
178 been validated through criminal proceedings can jeopardize his  
179 or her ability to obtain education, employment, and other  
180 achievements necessary to becoming a productive, contributing,  
181 self-sustaining member of society. Such negative consequences  
182 are unwarranted in cases in which the individual was not found  
183 to have committed the offense that is the subject of the sealed  
184 criminal history record. For these reasons, the Legislature  
185 finds that it is a public necessity that the criminal history  
186 records of a minor or an adult which have been administratively  
187 sealed be confidential and exempt from public records  
188 requirements.

189 Section 4. This act shall take effect on the same date  
190 that HB 857 or similar legislation takes effect, if such  
191 legislation is adopted in the same legislative session or an  
192 extension thereof and becomes a law.